

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

JOHN DUFFY III, on his own behalf  
and on the behalf of all others similarly situated,

CIVIL ACTION  
NO. CV-07-3930

Plaintiff,

-against-

**ORIGINAL ANSWER**

STEPHEN EINSTEIN & ASSOCIATES, P.C.

Defendant.

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Stephen Einstein & Associates, P.C., Defendant, hereby answers Plaintiff's Complaint in this case as follows:

1. Paragraph 1 of the Complaint does not require an answer. However, to the extent that it alleges unlawful or actionable conduct by Defendant it is denied.
2. With regard to Paragraph 2 of the Complaint, Defendant admits that the Court has subject matter jurisdiction. Defendant denies that Plaintiff has sued under 15 U.S.C. § 1692, and it denies violating the Fair Debt Collection Practices Act (FDCPA).
3. Paragraph 3 of the Complaint is admitted.
4. The first sentence of Paragraph 4 of the Complaint is admitted. The second sentence of Paragraph 4 is denied.
5. Paragraph 5 of the Complaint is admitted.
6. With regard to Paragraph 6 of the Complaint Defendant asserts that:
  - a. this action cannot satisfy the requirements of FRCP 23;
  - b. Plaintiff and his counsel cannot satisfy the requirements of FRCP 23; and

- c. the proposed class definition is fatally defective.
- 7. Paragraph 7 of the Complaint is denied.
- 8. Paragraph 8 of the Complaint is denied.
- 9. Paragraph 9 of the Complaint, inclusive of its sub-parts, is denied.
- 10. Paragraph 10 of the Complaint is denied.
- 11. Paragraph 11 of the Complaint is denied.
- 12. Paragraph 12 of the Complaint is denied.
- 13. Paragraph 13 of the Complaint is denied.
- 14. Paragraph 14 of the Complaint is denied.
- 15. With regard to Paragraph 15 of the Complaint:
  - a. The first sentence of the paragraph is admitted in part. The letter was sent, but to Plaintiff in care of his attorney.
  - b. The second sentence of the paragraph is admitted.
  - c. The third sentence of the paragraph is a statement as to which Defendant does not yet possess sufficient information to admit or deny; therefore it is denied at least until Defendant has had the opportunity to depose Plaintiff and his attorney.
  - d. The fourth sentence of the paragraph is admitted.
  - e. The fifth sentence of the paragraph is admitted as to the letter, but denied as to the envelope, which was not attached as alleged.
- 16. Paragraph 16 of the Complaint is denied to the extent of the denials set forth above.
- 17. Paragraph 17 of the Complaint is denied.
- 18. Paragraph 18 of the Complaint is denied.
- 19. Paragraph 19 of the Complaint is denied.

20. Defendant denies that Plaintiff is entitled to the relief set forth in the prayer to his complaint.

**AFFIRMATIVE DEFENSES**

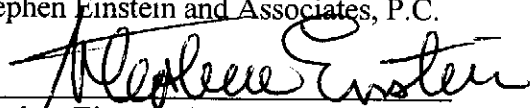
21. Subject to, and without waiving the responses set forth above Defendant further asserts the following affirmative defenses:
22. Plaintiff failed to mitigate his alleged damages.
23. Any alleged violation of the FDCPA was unintentional and occurred as a result of a bona fide error, notwithstanding Defendant's maintenance of procedures reasonably adapted to avoid the alleged violation. *See* 15 U.S.C. § 1692k(c).
24. Defendant reasonably and justifiably relied upon the file furnished to it. *See Jenkins v. Heintz*, 124 F3d 824 (7th Cir. 1997), *cert denied*, 523 US 1022, 118 S. Ct. 1304, 140 L. Ed. 3d 469 (1998), *Amond v. Brincefield, Hartnett & Assocs., PC*, 175 F3d 1013 (Table, Text at 1999 US App. LEXIS 4815, 1999 WL 152555) (4th Cir. 1999), and *Smith v. Transworld Sys., Inc.*, 953 F2d 1025 (6th Cir. 1992);

WHEREFORE, Defendant prays that certification be denied and that Plaintiff take nothing in this action, Defendant further prays for all such other and further relief, at law or in equity, as to which it may be justly entitled.

Respectfully submitted,

Stephen Einstein and Associates, P.C.

By:

  
Stephen Einstein (SE-0681)  
20 Vesey Street, Suite 1406  
New York, NY 10007  
Phone: (212) 267-3550  
Fax: (212) 267-3803